

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 5511/Mum/2018(Assessment year: 2009-10)

M/s Kunal Steel, 113, Kansara Street, Darukhana, 3 <sup>rd</sup> Lane, Mumbai- 9 PAN : AAHFK2164J	Vs	ACIT 17(2), Mumbai
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	None
Respondent by	Ms. Samatha Mullamudhi ( Sr.DR)
Date of hearing	16-10-2019
Date of pronouncement	23-10-2019

**ORDER**

**Per Pawan Singh, JM :**

1. This appeal by assessee is directed against the order of ld. CIT(A)-57, Mumbai dated 01.06.2018 for Assessment Year 2009-10. The assessee has raised the following grounds of appeal:

"1. There is delay of 2 days in filing the appeal. Delay occurred due to Saturday and Sunday. The 2 days delay shall be condoned.  
2. Under the facts and circumstances of the case and in law the Ld CIT (Appeal - 57) erred in giving relief of 4.5% and calculated the income @ 8% of alleged Hawala purchases. The addition shall be deleted.  
3. Under the facts and circumstances of the case and in law the Ld CIT (Appeal - 57) erred and allowed relief on Gross purchases a/c i.e. including taxes; how eve the Assessee have debited Net purchases to the purchase A/c. The direction shall be given to ACIT to give relief on net purchases.  
4. Under the facts and circumstances of the case and in law the Ld CIT (Appeal - 57) erred in treating genuine purchases as unexplained expenditure. The unexplained expenditure be deleted."

2. Brief facts of the case are that the assessee, a partnership firm dealing in iron & steel items, filed its return of income for AY 2009-10 on 15-09-2010 declaring total income at Rs.14,26,694/-. The return was

initially processed and accepted under section 143(1). Subsequently, on the basis of information received from the DGIT(Inv) that the assessee was one of the parties involved in receiving accommodation entries from bogus / hawala dealers, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. Notice under section 148 dated 28.03.2016 was issued and served upon the assessee. The assessee, vide letter dated 25-04-2016 stated to consider original return filed as return filed in response to notice u/s 148. The Assessing Officer after serving notice under section 143(2) / 142(1) dated 26.08.2016 proceeded for re-assessment. During the assessment, it was found that assessee had made purchases of Rs.2,19,23,582/- from Hanuman Steels which was the suspicious purchase. The AR of the assessee was accordingly asked to produce the evidence to establish that goods have actually been delivered / supplied. The assessee was also asked to furnish its explanation on the purchases purported to have made from the aforesaid party and the details of brokers / agents through whom purchases were claimed to have been made by the assessee including name, address, contact number, etc to prove the genuineness of the transaction. The assessee was also show caused to explained why expenditure claimed in respect of purchases shown to have made from the aforesaid dealer should not be

disallowed. The assessee explained that the payments were made by account payee cheque. The assessing officer, however, observed that payment made by account payee cheque was not a fool proof method of substantiating the assessee's claim and was not sufficient to establish the genuineness of the purchases. For this proposition the assessing officer placed reliance on the judgement of Hon'ble Supreme Court in the case of Kachwal Gems vs Jt.CIT (2007) 288 ITR 10 (SC). The assessing officer after considering the material before him concluded that the assessee has suppressed profit to the tune of Rs.27,40,448/- being 12.5% of non genuine purchases of Rs.2,19,23,592/- and the same was accordingly added to the total income. On appeal, the Ld.CIT(A), on finding that the GP adopted by the assessing officer on the alleged bogus purchases excessive, reduced the addition to the extent of 8% of alleged bogus purchases. Further aggrieved, the assessee filed this appeal.

3. Before us, none appeared on behalf of the assessee. The notice of hearing sent through RPAD was returned by the postal authority with the remark, "not found". Therefore, we left no option except to hear the submissions of the learned departmental representative ( Id. DR) for the revenue, who supported the order of the assessing officer and submitted that the Id. CIT(A) has already granted sufficient relief to the assessee in directing the assessing officer to restrict the addition to

the extent of 8% of alleged bogus purchases. The assessee is one of the beneficiaries of the purchases made from the hawala dealers, which were indulged in providing the bogus bills without delivery of the goods or material.

4. We have considered the submissions of the Ld. DR and perused the material available on record. During the assessment the assessing officer made disallowances of purchases @ 12.5% of the aggregate of the alleged purchased shown from the impugned/ hawala dealers by taking view that only estimated profit on such purchases is liable to be disallowed. On appeal the Ld.CIT (A) found that since purchases were and corresponding sales were also made, the assessing officer has not doubted the sales. The sales are not possible without the purchases. The assessee has shown gross profit (GP) @ 4.28%, which is reasonable in the trade of the assessee. The ld CIT(A) after considering the GP declared by the assessee directed the assessing officer to reduce the GP already declared by the assessee and thereby directed the assessing officer to estimate the GP @ 8% and granted relief to the assessee.
5. We have examined the facts of the present case independently. The assessing officer disallowed 12.5% of the impugned purchases. The ld CIT(T), while granting relief to the assessee has estimated the overall GP of assessee @ 8%. Therefore, is no consideration of the facts on

record about the total turnover of the assessee. The Id CIT(A) while estimating the GP to 8% has not brought the facts, if the assessee has shown other purchases, which were accepted as genuine.

6. We have noted that on similar set of fact, the Hon'ble Bombay High Court in PCIT vs. M Haji Adam & Co. (ITA No. 1004 of 2016 dated 11.02.2019) held that addition in respect of bogus purchase be limited to the extent of bringing the GP rate on bogus purchase at the same rate as other genuine purchases. We have further noted that the assessee has shown GP of 4.28. Therefore, considering the fact of the present case and the nature of business activities of the assessee and by following the decision of Hon'ble Bombay High Court, we direct the Assessing Officer to restrict the addition with regard to bogus purchases by brining the GP rate on such purchases at the same rate as that of other genuine purchases. Needles to say that before making addition, the Assessing Officer shall grant opportunity to the assessee before passing the order in accordance with law. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 23-10-2019.

Sd/- (Shamim Yahya)	Sd/- (Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 23 October, 2019  
Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai